

## **EXHIBIT23**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANTHONY MANGANIELLO,  
Plaintiff,

-against-

Index No.

07 cv 3644(HB)

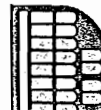
THE CITY OF NEW YORK, DET. LUIS AGOSTINI,  
individually and as a New York City Police  
Detective, SHAWN ABATE, individually and as  
a New York City Police Detective, DEREK PARKER,  
individually and as a New York City Police  
Detective, LT. HENRY SCOTT, individually and as a  
New York City Police Lieutenant, P.O. ALEX PEREZ,  
individually and as a New York City Police  
Officer, P.O. MIRIAM NIEVES, individually and as  
a New York City Police Officer, MICHAEL PHIPPS,  
individually and as the Commanding Officer of  
the 43rd Precinct, JOHN MCGOVERN, individually  
and as a New York City Police Detective Sergeant,  
ROBERT MARTINEZ, individually and as a New York  
City Police Detective, GERYL MCCARTHY,  
individually and as a New York City Police  
Deputy Inspector,

Defendants.

-----X  
December 19, 2007

1:20 p.m.

DEPOSITION of LIEUTENANT HARRY SCOTT



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LIEUTENANT HARRY SCOTT

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1 MR. JOSEPH: I'll adopt the  
2 question; that's fine.

3 Q. Did you get the document from anyone  
4 other than your attorney?

5 A. No.

6 Q. Okay. Are you presently employed by  
7 the New York City Police Department?

8 A. I am not now.

9 Q. When did you cease to become  
10 employed?

11 A. I retired in 2002.

12 Q. When did you begin your employment  
13 with the New York City Police Department?

14 A. 1982, January.

15 Q. In 2002, what was your position with  
16 the New York City Police Department?

17 A. I was with the Transit Police  
18 Department at that time, and I was a patrolman.

19 Q. In 2002?

20 A. Oh, in 2002. I'm sorry. I was a  
21 lieutenant squad commander in the Bronx County  
22 with the NYPD.

23 Q. Were you a lieutenant commander of  
24 the 43rd Precinct?

1 A. Yes.

2 Q. For how long had you been --

3 A. Oh, wait. Not in 2002, in 2001. In  
4 2002, I was the CO of the 5-2 Squad.

5 Q. When did you become the lieutenant  
6 commander of the 43rd Precinct?

7 A. Sometime in 2001. I don't remember  
8 exactly when.

9 Q. Was it prior to February of 2001?

10 A. You know, I had three commands in  
11 the Bronx and I remember during 9/11, I was in  
12 the 5-2 but I went to the 4-3, because I had  
13 uniforms there. I don't remember the exact date.

14 Q. On February 12th, 2001, what  
15 precinct were you assigned to?

16 THE WITNESS: Is that --

17 Q. Let me rephrase the question.

18 A. Okay.

19 Q. Do you recall an incident -- do you  
20 recall an investigation into the homicide of  
21 Albert Acosta?

22 A. Yes.

23 Q. On the day of -- that that  
24 investigation began, where were you assigned?

1 A. To the 4-3 Squad.

2 Q. And what was your position on that  
3 date?

4 A. I was the commander of the 4-3  
5 Squad.

6 Q. And what were your job  
7 responsibilities as commander?

8 A. To supervise about 30 or 40  
9 detectives and civilian employees, sergeants; to  
10 review cases, case management, administrative  
11 duties, equipment training, disciplinary action.  
12 Represent the squad at community meetings,  
13 Comstat meetings; network with various agencies.

14 Q. Now, what exactly did your  
15 day-to-day duties entail regarding reviewing  
16 cases?

17 A. You had in-baskets and out-baskets,  
18 and you would look at a case folder. And there  
19 were certain time periods where 5s had to be in.  
20 You would review it for completeness. You would  
21 recommend a case closing; you would recommend  
22 that they reopen it. There's different kinds of  
23 case closings, such as an arrest or an  
24 exceptional clearance or various other closings.

1 Q. Now, you also mentioned case  
2 management, what were your responsibilities with  
3 regard to case management?

4 A. A detective has to -- there's a  
5 sequence of 5s. They have to have like a 5 in  
6 within the first day, then the first three days.  
7 And you stay on top of them to make sure that  
8 they take care of their time frame with their  
9 paper.

10 Q. Okay. Now, when you say 5s, are you  
11 referring to DD-5s?

12 A. Yes. Yeah.

13 Q. Now, when you review these -- in  
14 review of DD-5, do you also review any other  
15 supporting paperwork upon which it's based?

16 MS. FROMMER: Objection. You can  
17 answer.

18 Q. And I'm asking you back in February  
19 2001.

20 A. Yeah, you may if someone -- if  
21 there's, you know, vouchers, or maybe the  
22 detective will clip his notes to it, various  
23 other forms, unusuals; a 61 from another case  
24 that's related that case from the same person or

4 (Pages 10 to 13)

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1 defendant.

2 **Q. Was there a standard practice of how**  
3 **the DD-5s were handled in terms of document**  
4 **retention?**

5 MS. FROMMER: Objection. You can  
6 answer.

7 A. Certainly.

8 **Q. What was that procedure?**

9 A. After the detective typed it, it  
10 would stay in the folder, and the folder would  
11 put in a in-bin in the supervisor's office. And  
12 myself or the sergeant or another sergeant, a  
13 supervisor, would review the case and sign the 5s  
14 in it. We may recommend that he does other  
15 things and put a note in there or see him or have  
16 them come in and talk about the case. And when  
17 it's completed, it gets broken down and the 5s go  
18 to various locations in the department for  
19 storage.

20 **Q. What about the handwritten notes**  
21 **that you indicated would be attached to a DD-5?**

22 MS. FROMMER: Objection.

23 **Q. Where do they go, or where did they**  
24 **go in 2001?**

1 A. That stays with the case folder.  
2 That's Rosario material, so that would stay with  
3 5s in the folder.

4 **Q. Okay. What's your understanding of**  
5 **what Rosario material is?**

6 A. I guess any written material  
7 pertaining to the case, relevant to the case.

8 **Q. And is that material that would, at**  
9 **a later point, be turned over to a defense**  
10 **attorney?**

11 A. Most of the time, it is, yeah.

12 **Q. Okay. And --**

13 A. If they request it.

14 **Q. Now, were there any procedures at**  
15 **the 43rd Precinct for maintaining case files --**

16 MS. FROMMER: Objection. You can  
17 answer.

18 **Q. -- back in February of 2001?**

19 A. There's like a job-wide procedure  
20 not only in the 4-3, it's throughout the job for  
21 maintaining files and folders in cases.

22 **Q. What was the procedure?**

23 MS. FROMMER: Objection. You can  
24 answer.

1 **Q. Strike that.**

2 **In February of 2001, what was the**  
3 **procedure for maintaining a case folder in the**  
4 **43rd Precinct?**

5 MS. FROMMER: Objection. You can  
6 answer.

7 A. Okay. Well, homicide cases are a  
8 little different than --

9 **Q. I'm gonna limit it to homicide.**

10 A. Okay.

11 **Q. I'm limiting my question to homicide**  
12 **to make it easier for you.**

13 A. Most of them don't go into a file  
14 folder with the other crimes. They stay in a  
15 corrugated cardboard box marked with the victim's  
16 name and date of incident, 61 number, and  
17 usually, the detective's name. And the storage  
18 room in the 4-3 was about the size of this room,  
19 and it was packed with maybe 300 boxes --

20 **Q. Okay.**

21 A. -- by year also.

22 **Q. Right. And is that where the case**  
23 **folders were -- back from -- at your time at the**  
24 **43rd Precinct, is that where the case folders**

1 **were stored while they were still active?**

2 A. Sometimes, sometimes they would be  
3 in the supervisor's office. If it's active, the  
4 Bronx District Attorney may request it. Homicide  
5 task force, which is in another location, may  
6 request it. The detective may hold onto it to do  
7 further work on it. Other than that, it would go  
8 into that storage area to be readily accessible  
9 to other units like homicide task force or gang  
10 units or, say, if the detective's not in, if they  
11 got a lead on a case, someone else would be able  
12 to obtain that folder.

13 **Q. Did you ever -- was there ever a**  
14 **situation where it would be acceptable to store a**  
15 **homicide case folder in a locker room?**

16 MS. FROMMER: Objection. You can  
17 answer.

18 A. In a locker room? The squads are so  
19 cramped. A locker room. If it's squad equipment  
20 locker room where other squad material is and  
21 what not, due to space constraints, I'd say yes,  
22 yeah.

23 **Q. If it's not a squad locker room, a**  
24 **squad, equipment locker room.**

5 (Pages 14 to 17)



1 A. Okay. Like a personal locker  
2 room --

3 Q. Correct.

4 A. -- for the men which is in another  
5 part of the building, I would say no. No.

6 Q. Was there any procedure that was to  
7 be followed when a detective got transferred to  
8 another precinct concerning what was going to --  
9 what should happen to the case folders in his  
10 possession?

11 MS. FROMMER: Objection. You can  
12 answer.

13 A. Well, in his possession, upon him  
14 leaving the squad for another squad or location,  
15 the case would be reassigned to someone else, and  
16 not that they would physically take the case.

17 The case, like I said, would be in the storage  
18 room or in the supervisor's room or the D.A.'s  
19 Office or the Homicide Task Force Office.

20 Q. Was it acceptable in your -- in your  
21 -- based on your experience, was it acceptable  
22 protocol for a detective, who was leaving the  
23 43rd, to put a case folder in the locker room and  
24 not advise any other detectives that's where it

19 was?

2 MS. FROMMER: Objection. You can  
3 answer.

4 A. I don't see that happening, no. No.

5 Q. What do you mean by, you don't see  
6 that happening? I just want you to clarify your  
7 answer.

8 A. Well, because the -- before he  
9 leaves the command, the case would be assigned to  
10 another detective who was actively in the command  
11 and, like I said, the case would, if not in the  
12 supervisor's room, it would be in the case  
13 storage area that we utilize; that you're  
14 referring to as a locker room.

15 Q. Now, at the point in time you left  
16 the 43rd Precinct, was Lieutenant -- I'm sorry,  
17 was Detective Agostini still assigned to the  
18 43rd, or had he already been reassigned?

19 MS. FROMMER: Objection.

20 A. I think he was still there when I  
21 was transferred.

22 Q. When was the last time you spoke  
23 with Luis Agostini?

24 A. Yesterday.

1 Q. Okay. And what did you speak to him  
2 about yesterday?

3 A. How he was, if he retired; if he  
4 still cooked. He's a chef. If he spoke with  
5 other detectives that him and I know in common;  
6 how his wife was. Basic stuff.

7 Q. Anything else?

8 A. If he was okay; how this case was,  
9 you know.

10 Q. Okay. But -- and by the way, before  
11 yesterday, when was the last time you spoke with  
12 Detective Agostini?

13 A. I think when I was first notified  
14 that I was named in a, for lack of a better word,  
15 the Manganiello case, that I was subpoenaed for  
16 or depositioned for, I called the 4-3 and asked  
17 to speak with him.

18 Q. Okay. Was that this Manganiello  
19 case --

20 A. No. No.

21 Q. -- or a different --

22 A. It was a couple of years ago. Three  
23 years ago, maybe.

24 Q. Now, what did you say to Mr.

1 Agostini concerning this case, if anything, and  
2 what did he say to you?

3 A. About this case?

4 Q. About your appearance here today.

5 MS. FROMMER: Objection. He didn't  
6 testify he said --

7 MR. JOSEPH: Okay. I'll rephrase  
8 it.

9 Q. Sir, did you in any way mention that  
10 you were going to be giving a deposition today?

11 A. To him, I did. Yes.

12 Q. And what did he -- what -- can you  
13 tell me everything you said to him and everything  
14 he said to you --

15 MS. FROMMER: Objection.

16 Q. -- concerning your testimony today  
17 or the Manganiello case?

18 MS. FROMMER: Objection. I'm gonna  
19 instruct him not to answer that to the  
20 extent you're asking him if he told  
21 Detective Agostini about conversations he  
22 had with me. That's privileged.

23 Q. Apart from anything you may have  
24 said concerning your conversations with your

6 (Pages 18 to 21)

LIEUTENANT HARRY SCOTT

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1 A. Well, I had to go downtown and do a  
2 deposition, and then I was kind of notified that  
3 I might have to go through another deposition, so  
4 that's what we meant.

5 Q. While you were lieutenant commander  
6 of the 43rd, did you ever have any disciplinary  
7 issues with Luis Agostini?

8 A. No.

9 Q. Do you ever have any disciplinary  
10 issues with Shawn Abate?

11 A. No.

12 Q. On February 12th, 2001, did you  
13 become involved in an investigation of a homicide  
14 involving Albert Acosta?

15 MS. FROMMER: Objection. You can  
16 answer.

17 A. Is that the day of the homicide?

18 Q. Correct.

19 A. Is that the -- yes, I had a good  
20 part of the investigation.

21 Q. What was your responsibility during  
22 that investigation?

23 A. Well, I responded to the scene.

24 Q. And by the way, when you responded

1 few pages and give it to the detective that it --  
2 the case that it pertains to. If it had personal  
3 stuff in it, I would keep it or throw it away.

4 Q. Okay. And after you gave it to the  
5 detective who it was assigned to, was it your  
6 expectation that that would be placed in a case  
7 folder?

8 MS. FROMMER: Objection. You can  
9 answer.

10 A. Not just my expectation, it would be  
11 departmental procedure that it would be put in  
12 the folder.

13 Q. Okay. Now, what did you do when you  
14 arrived at the scene of where Acosta had been  
15 murdered?

16 A. Well, on the radio, I heard -- on  
17 the police radio, I heard that there was a  
18 dispute with a knife. And then shortly  
19 thereafter, we heard -- I heard on the radio a  
20 signal 10-13, which means that an officer is in  
21 trouble. And I responded to the location with --  
22 it was either Sergeant McGovern or Napolitano.  
23 There may have been some other detectives in the  
24 car. And I think that there was another car full

1 to the scene of the Acosta homicide, did you have  
2 any documents with which you used to take notes?

3 MS. FROMMER: Objection. You can  
4 answer.

5 A. I usually carry a pad in case I do  
6 have to take notes.

7 Q. And did you ever take notes  
8 concerning anything that happened at the scene of  
9 Albert Acosta's murder?

10 A. No.

11 Q. Aside from the pad, did you have any  
12 other documents such as a memo book?

13 A. No, just a spiral pad. It's --

14 MS. FROMMER: It's okay.

15 Q. Do you still have the pad that you  
16 had on February 12, 2001?

17 A. I doubt it, no.

18 Q. Do you know what happened to that  
19 pad that you had on February 12, 2001?

20 A. No, I'm sure I used it up.

21 Q. Okay. What happens to the pad after  
22 -- what happened to the pad after it was used up?

23 A. If it has relevant information  
24 pertaining to a case, I would probably rip out a

1 of detectives that responded there also. Several  
2 uniformed officers --

3 Q. Let me interrupt you for one second.

4 A. Sure.

5 Q. You say you heard a dispute on a  
6 radio, was that a New York City Police Department  
7 radio; was it a Parkchester transmission or  
8 something else?

9 MS. FROMMER: Objection. You can  
10 answer.

11 A. It was an NYPD radio and sometimes  
12 Parkchester would -- Parkchester security  
13 personnel would utilize PD radios, our radios.

14 Q. And when you first heard -- strike  
15 that.

16 Did you respond to the dispute with  
17 a knife?

18 A. No.

19 Q. Okay. Do you know if members of  
20 your precinct did respond to a dispute with a  
21 knife?

22 MS. FROMMER: Objection. The  
23 precinct or the squad?

24 MR. JOSEPH: Precinct.

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1 MS. FROMMER: You can answer.

2 A. I don't have knowledge if uniformed  
3 patrol responded to that incident.

4 Q. Now, where were you when you  
5 received a call of a 10-13?

6 MS. FROMMER: Objection.

7 A. I was in my office.

8 MS. FROMMER: You can answer. You  
9 can answer.

10 A. I was in my office.

11 Q. Now, when you say 10-13, did respond  
12 -- did -- well, to the best your recollection,  
13 what exactly came over the radio?

14 A. I don't remember word for word, but  
15 basically it was a report of a uniformed officer  
16 in distress.

17 Q. Was there an indication that it was  
18 a Parkchester security officer or an SPO special  
19 patrol officer?

20 A. At first, no.

21 Q. Okay. Was there a subsequent  
22 response -- I'm sorry. Strike that.

23 Was there a subsequent transmission  
24 indicating that it was a special patrol officer

1 from Parkchester that was down?

2 MS. FROMMER: Objection. You can  
3 answer.

4 A. It may have been after I was at the  
5 scene or when other personnel first responded  
6 there to the scene.

7 Q. Okay. Can you give me an  
8 approximation of how much time passed between the  
9 first radio transmission of a 10-13 and the  
10 transmission that it was a SPO or a special  
11 officer down?

12 A. I have no idea.

13 Q. Okay. But do you have a memory of a  
14 radio transmission stating that it's a  
15 Parkchester security officer or a SPO that was in  
16 trouble or down?

17 A. Vaguely. Yes, I do.

18 Q. Okay. And do you have a  
19 recollection of where you were when you received  
20 that transmission?

21 A. I believe I was driving. I was  
22 driving to the location, and as you're driving to  
23 such an incident, you request updates from the  
24 first officer at the scene.

1 Q. Okay.

2 A. Sometimes those 10-13 calls are  
3 bogus, so we like to get an update as soon as  
4 possible.

5 Q. Okay. And let me ask you this: As  
6 soon as you heard the first 10-13, did you leave  
7 immediately, leave the office immediately?

8 A. Yes.

9 Q. How much time -- how long does it  
10 take to get from the 43rd Precinct to 1700

11 Metropolitan Oval or Avenue where Mr. Acosta was  
12 ultimately found?

13 A. It may have been under ten minutes.

14 Q. Okay. So would it be fair to say  
15 within ten minutes of the first transmission, the  
16 second transmission indicating that there was an  
17 SPO or a Parkchester security officer was made?

18 MS. FROMMER: Objection. You can  
19 answer.

20 A. It may be fair to say that, yeah.

21 Q. Okay. And do you know whether the  
22 Parkchester officers had access, or if they were  
23 able to hear what was being broadcast on the NYPD  
24 channels?

1 MS. FROMMER: Objection.

2 A. If they have an NYPD radio, and if  
3 they have the radio volume turned up, sure, they  
4 could hear it. They can monitor it.

5 Q. What happened -- I'm sorry. Strike  
6 that.

7 When you responded to the scene, can  
8 you tell me who else was present when you got  
9 there?

10 A. There was a whole bunch -- there was  
11 numerous uniformed personnel, and myself, and  
12 maybe six or eight detectives, and plainclothes  
13 officers from various units.

14 Q. What did you do when you arrived?

15 A. I went over to a uniform, and I  
16 asked them where the scene was. And I think  
17 there was a uniform supervisor there that I  
18 requested that the crime scene be expanded a bit.

19 Q. What do you mean by that?

20 A. Well, the original crime scene was  
21 in a basement area like a rec room or some kind  
22 of a storage room. And there was one doorway  
23 out, which led to a walkway which led to the  
24 street, so I had that whole area frozen, crime --

9 (Pages 30 to 33)



## LIEUTENANT HARRY SCOTT

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1 you know, taped off to the -- from -- so the  
 2 public can't get into the crime scene.  
 3 Q. Okay. And when you first walked  
 4 into the basement of 1700 Metropolitan Oval, how  
 5 far did you walk before you came to the room  
 6 where Mr. Acosta was?  
 7 MS. FROMMER: Objection.  
 8 Q. How many feet; what distance, yards?  
 9 A. I really don't remember.  
 10 Q. Okay. When you got to that room,  
 11 can you tell me how far into the room Mr. Acosta  
 12 was?  
 13 A. He was removed before I arrived at  
 14 the scene by ambulance.  
 15 Q. But was there a marking as to where  
 16 he was?  
 17 MS. FROMMER: Objection. You can  
 18 answer.  
 19 A. I think there was some blood and  
 20 there was some shell casings and there was a  
 21 straight-back chair. And his coat was on this  
 22 chair; his uniform security guard coat.  
 23 Q. What did you do next?  
 24 A. I looked around at the scene. I

1 think there was a couple of .22 caliber shells on  
 2 the ground. Spoke with one of the detectives to  
 3 make sure that Crime Scene was called. I  
 4 probably had a department cellphone with me and I  
 5 called up the -- we call it the wheel. It the  
 6 borough office where the chief of the Bronx  
 7 detectives is. And I would updated them as to,  
 8 you know, whether the guy was likely to die;  
 9 where he went, what hospital. And at the wheel,  
 10 at the borough office, they would make a log  
 11 notification of the incident. As much  
 12 information as I can give them, they would write  
 13 in this book, and they would notify other units  
 14 to assist us.  
 15 Q. What did you do next?  
 16 A. I left the crime scene area and went  
 17 back into the street area. And some ranking  
 18 members of the department arrived, and I told  
 19 them -- informed them as to what the scene was  
 20 and like where the victim was taken and who I had  
 21 with me. And they asked what I needed and, I  
 22 think, I requested some people from Homicide Task  
 23 Force and, you know, various units to come and to  
 24 help us.

1 Q. Did Crime Scene arrive on the scene?  
 2 A. I think they came after I left.  
 3 Q. Okay. When you say, some ranking  
 4 members arrived, who are you referring to?  
 5 A. Uniform Patrol Inspector Phipps and  
 6 Detective Borough Bronx Captain McCarthy.  
 7 Q. And what did you say to McCarthy,  
 8 and what did McCarthy say to you?  
 9 A. I don't remember the --  
 10 MS. FROMMER: Objection. Sorry.  
 11 A. I don't remember the exact  
 12 conversation, but it was relevant to, you know,  
 13 if the guy, the victim was likely -- where he was  
 14 brought, who I had, what we're doing, was Crime  
 15 Scene notified; stuff like that.  
 16 Q. Now, when you referred to who you  
 17 had, what does that mean?  
 18 A. Detectives I have. Do I have enough  
 19 manpower to, you know, do I need anything.  
 20 Q. Okay. And when you spoke with Mr.  
 21 Phipps, what was the substance of that  
 22 conversation?  
 23 A. Probably requested more uniformed  
 24 personnel to help us with the scene and the area

1 and, you know, a search for any more evidence or  
 2 property or people or witnesses and canvas and  
 3 try to get information.

4 Q. Did you speak with Detective  
 5 Agostini at the scene?

6 A. I'm sure I did, yeah.

7 Q. What did you say to Detective  
 8 Agostini, and what did he say to you?

9 MS. FROMMER: Objection.

10 A. I don't remember.

11 Q. Did you have a conversation with  
 12 Detective Abate at the scene?

13 A. I'm sure that I did, yes, and I  
 14 don't remember the details of that conversation  
 15 either.

16 Q. Do you remember the sum and  
 17 substance, not the exact details, of that  
 18 conversation?

19 A. Two detectives approached me, and  
 20 said that they had the victim's partner, and that  
 21 they would like to go to the squad or to the  
 22 precinct to speak with him. And one of them, I  
 23 don't remember which one, stated that this guy  
 24 might be able to help with case.



1 **Q. Now, when you say "two detectives,"**  
2 **who were those two detectives?**

3 A. I think -- like I said, I don't  
4 remember exactly who it was. There may have been  
5 about ten detectives there.

6 **Q. But do you have a recollection one**  
7 **way or another whether it was Detective Agostini**  
8 **or Detective Abate that you were speaking with --**

9 MS. FROMMER: Objection.

10 **Q. -- concerning bringing the partner**  
11 **back to the squad?**

12 A. No, that I do not.

13 **Q. Was it your understanding at this**  
14 **point that that partner they were referring to**  
15 **was a suspect?**

16 A. No. I did see Mr. Manganiello at  
17 the scene. He looked a little pale. His uniform  
18 was a little disheveled. He looked like he was  
19 running. He was out of breath and sweaty.  
20 And --

21 **Q. Sir, typically when a 10-13 comes**  
22 **over a radio, it's expected that officers-on-foot**  
23 **are going to run onto the scene; correct?**

24 MS. FROMMER: Objection.

1 A. I would imagine.

2 **Q. In fact, would it be unusual for an**  
3 **officer not to run to a scene after there's a**  
4 **call of an officer down?**

5 MS. FROMMER: Objection.

6 A. I don't know what his thoughts were,  
7 or what other officers' thoughts are.

8 **Q. I'm not asking you what other**  
9 **officers' thoughts are. I'm saying, in your**  
10 **experience, would it be unusual for an officer**  
11 **not to run to a scene when a call comes over for**  
12 **an officer down?**

13 MS. FROMMER: Objection.

14 A. Yes, it would be unusual.

15 **Q. And by the way, the two detectives**  
16 **you spoke to, did they convey any information to**  
17 **you that would in any way indicate that Anthony**  
18 **Manganiello was in any way connected to the**  
19 **murder of Albert Acosta?**

20 MS. FROMMER: Objection.

21 A. Yes, one of the detectives looked at  
22 me and kind of, not really winked, but kind of  
23 looked at me like, opened his eyes very much and  
24 then nodded towards Mr. Manganiello. And when I

1 looked at Mr. Manganiello, just his appearance,  
2 he looked like he was in a scuffle. He also had  
3 white, like, plaster or sheetrock material on the  
4 sleeve of his jacket, on the shoulder of his  
5 jacket.

6 **Q. Now, when you say -- which detective**  
7 **was it that opened his eyes and sort of nodded to**  
8 **Mr. Manganiello -- in Mr. Manganiello's**  
9 **direction?**

10 MS. FROMMER: Objection.

11 A. That I do not remember.

12 **Q. Did you ask him why he was opening**  
13 **his eyes and nodding towards Mr. Manganiello?**

14 A. Did I ask him, no.

15 **Q. What was your understanding as to**  
16 **why this detective took this action?**

17 MS. FROMMER: Objection.

18 A. He was letting me know that Mr.  
19 Manganiello might be able to shed some light on  
20 this incident.

21 **Q. Now, aside from this detective**  
22 **looking at you opening his eyes wide and nodding**  
23 **in his direction, was there any actual evidence**  
24 **in your -- that you had knowledge of at that**

1 **point that would in any way suggest that Mr.**  
2 **Manganiello was involved in the death of Albert**  
3 **Acosta?**

4 MS. FROMMER: Objection. You can  
5 answer.

6 A. No.

7 **Q. Do you know why this detective was**  
8 **opening his eyes wide and looking at Mr.**  
9 **Manganiello?**

10 MS. FROMMER: Objection. Asked and  
11 answered. You can do it again.

12 THE WITNESS: Would you like me to  
13 answer the --

14 MS. FROMMER: Yeah.

15 A. I guess because of Mr. -- not I  
16 guess, it was because of Mr. Manganiello's  
17 appearance and, I guess, maybe his appearance.

18 **Q. And apart from his clothes being**  
19 **generally disheveled and some kind of white thing**  
20 **being on his uniform, what about -- was there**  
21 **anything else about his appearance that made him**  
22 **a suspect or a person of interest, so to speak?**

23 MS. FROMMER: Objection.

24 A. Well, I think I said that he was not

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1 a suspect --  
2 Q. Okay.  
3 A. -- you threw that in there.  
4 Q. I'll rephrase the question, sir.  
5 A. Great.  
6 Q. Now, let me clarify this. At the  
7 point in time when the detectives opened their  
8 eyes and nodded in his direction, was it your  
9 understanding that they were indicating to you  
10 that they believed that Mr. Manganiello was a  
11 suspect?  
12 MS. FROMMER: Objection.  
13 A. No. Again, I clearly stated that  
14 they said he may be of help.  
15 Q. Okay. And what did you mean that --  
16 what was your understanding of "he may be of  
17 help"?  
18 A. Well, since the both, him and --  
19 since Mr. Manganiello and the victim were  
20 partners that day, that he may be able to tell us  
21 what happened to his partner.  
22 Q. Were you aware that in Parkchester  
23 security, the people that partner up don't  
24 actually walk around and work together?

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1 MS. FROMMER: Objection.  
2 A. No, I was not aware of that.  
3 Q. Okay. Did you ever speak to anybody  
4 at Parkchester security to ascertain whether Mr.  
5 Manganiello and Mr. Acosta were together at any  
6 point that day?  
7 MS. FROMMER: Objection.  
8 A. Later in the day, when I was in the  
9 squad room, several Parkchester security people  
10 responded to the detective squad.  
11 Q. Okay.  
12 A. I believe that one of them was the  
13 union delegate. And there were some people that  
14 were concerned about Mr. Acosta, and there were  
15 some security personnel that were concerned about  
16 Mr. Manganiello. The exact content of the  
17 conversation, I do not remember.  
18 Q. Did you take any -- did you record  
19 who was present at the detective squad? In other  
20 words, was there any record kept of who showed up  
21 from Parkchester?  
22 MS. FROMMER: Objection. You can  
23 answer.  
24 A. If it was relative to the case, I'm

1 -- the case detective would note that, if he  
2 spoke with anyone.  
3 Q. Okay. And would that -- what would  
4 happen -- what procedure, if any, was there that  
5 -- what would happen to his notes after he spoke  
6 with them?  
7 MS. FROMMER: Objection.  
8 A. His notes would go with a 5 that he  
9 would do pertaining to the relevant conversation.  
10 Q. And what would happen to those DD-5s  
11 after he prepared it?  
12 A. They'd go into the case folder and  
13 then the folder and other relevant material go in  
14 the box that I mentioned earlier.  
15 Q. By the way, do you know what  
16 happened to the box in the Manganiello --  
17 concerning the investigation of the death of  
18 Albert Acosta?  
19 A. Do I know what happened to the box?  
20 Q. Yeah, do you know where it is now?  
21 A. No.  
22 Q. Did -- at any point, did you become  
23 aware that it wasn't where it was supposed to be?  
24 MS. FROMMER: Objection.

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1 A. I heard that some things may have  
2 been missing. I didn't know -- you're saying the  
3 whole box was missing. It seems very unusual to  
4 me.  
5 Q. Okay. Who did you hear this from?  
6 A. It may have been Agostini over three  
7 years ago. It may have been another member of  
8 the squad when I called there.  
9 Q. What exactly, to the best of your  
10 recollection, did Agostini say to you concerning  
11 a document or a number of documents being  
12 missing --  
13 MS. FROMMER: Objection.  
14 Q. -- concerning the prosecution of  
15 Anthony Manganiello?  
16 MS. FROMMER: Objection.  
17 A. I do not. Like I said, it was a  
18 couple of years ago, so I don't remember the  
19 exact conversation. He said that he's missing 5s  
20 or missing a folder. And I said, well, is it in  
21 Bronx Homicide Task Force, is it in the D.A.'s  
22 Office or, you know, where could it be?  
23 Q. What was his response?  
24 A. And he did not know. I think

12 (Pages 42 to 45)



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1 Agostini transferred at a later date.  
 2 **Q. In your years as a — for how many**  
 3 **years were you a lieutenant commander; not just**  
 4 **at the 43rd, but in general?**

5 A. Six years.

6 **Q. In your six years as a lieutenant**  
 7 **commander, had you ever heard of a case folder**  
 8 **going missing on a homicide case apart from this**  
 9 **incident?**

10 MS. FROMMER: Objection. You can  
 11 answer.

12 A. I believe so and, I believe, that  
 13 they were usually turned up.

14 **Q. Do you know if the Anthony**  
 15 **Manganiello case folder ever turned up?**

16 A. No. I do not know.

17 **Q. Did you ask Mr. Agostini whether**  
 18 **this folder ever turned up?**

19 MS. FROMMER: Objection.

20 A. Other than the brief conversation I  
 21 had with Agostini yesterday, no. I didn't ask  
 22 him.

23 **Q. Well, what did you say to him**  
 24 **yesterday about the case folder, and what did he**

1 A. And for such an important case, for  
 2 it to be missing or part of it to be missing, I  
 3 found that to be very unusual because, like I  
 4 said, Agostini is really very thorough with his  
 5 case folders.

6 **Q. Okay. Now, did he provide you with**  
 7 **an explanation as to what happened to this case**  
 8 **folder?**

9 MS. FROMMER: Objection.

10 A. No.

11 **Q. Did you ask?**

12 A. Other than saying maybe another unit  
 13 has it, I didn't know what -- where it could be  
 14 and neither did he.

15 **Q. By the way, is losing a case folder**  
 16 **something that a detective would normally be**  
 17 **disciplined for?**

18 MS. FROMMER: Objection.

19 A. I have not had that experience. I  
 20 don't know. I honestly don't know.

21 **Q. Let's take a step back to the point**  
 22 **in time when you were at the scene of Acosta's**  
 23 **murder and these unknown detectives opened their**  
 24 **eyes and nodded in Mr. Manganiello's direction.**

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1 say to you?

2 A. We didn't discuss the case folder  
 3 yesterday.

4 **Q. Okay. Did you discuss any evidence**  
 5 **going missing yesterday?**

6 A. No.

7 **Q. I think you said earlier you found**  
 8 **it to be unusual. What did you mean by that?**

9 MS. FROMMER: Objection. I think  
 10 you asked the question if -- it was a yes  
 11 or no question, and he answered that  
 12 question.

13 MR. JOSEPH: No, no. Not in response  
 14 to that question, in response to a  
 15 different question.

16 **Q. Did you -- a few minutes ago, you**  
 17 **indicated that you found it unusual that certain**  
 18 **documents were missing. I'm just asking what did**  
 19 **you mean by that?**

20 MS. FROMMER: Objection. You can  
 21 answer.

22 A. Detective Agostini is very, very  
 23 meticulous with his case folders.

24 **Q. Okay.**

1 **What happened next?**

2 MS. FROMMER: Objection. You  
 3 mischaracterized his testimony, but to the  
 4 extent you remember what your testimony  
 5 was, you can answer.

6 A. Those two detectives, or detective  
 7 and sergeant maybe, went to a vehicle with Mr.  
 8 Manganiello and they left the scene.

9 **Q. Did you remain at the scene, or did**  
 10 **you leave the scene also?**

11 A. I remained at the scene.

12 **Q. While you were at the scene, did you**  
 13 **speak with any potential witnesses?**

14 A. Me personally, no. But while you're  
 15 at the scene, detectives do what's called a  
 16 canvas, and they actively seek people who have  
 17 information pertaining to the case.

18 **Q. And did any detectives report back**  
 19 **to you the results of this canvas while you were**  
 20 **there at the scene?**

21 A. Yes, I believe they said that they  
 22 had a Parkchester employee who had information  
 23 pertaining to the case.

24 **Q. Was anything else conveyed to you**

13 (Pages 46 to 49)



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1 other than what you just said? In other words,  
2 was there more -- were you given more details  
3 about what this Parkchester employee said?  
4 A. It's been a while. It's been a  
5 couple of years, so I think the person stated  
6 that they heard some shots from the basement  
7 area. I guess maybe the windows were open. I  
8 don't know. And that they may have seen someone  
9 leaving the basement area.  
10 Q. Did they indicate to you who that  
11 someone was?  
12 A. Did the person or did the detectives  
13 relay that to me?  
14 Q. Did the detectives relay to you  
15 whether or not the Parkchester employee  
16 identified who he saw leaving the scene?  
17 MS. FROMMER: Object to the form.  
18 You can answer.  
19 A. I don't think so, no.  
20 Q. Now, by the way, which detective was  
21 it that relayed that information to you  
22 concerning the Parkchester employee?  
23 A. When I started to tell you that  
24 information, I said it's been awhile. I don't

1 A. Mr. Manganiello was at the command,  
2 and I was at the scene so --  
3 Q. Let me rephrase the question and  
4 maybe make it easier for you. In your mind, at  
5 the point in time when you left the scene, was  
6 Anthony Manganiello a suspect in the homicide of  
7 Albert Acosta?  
8 MS. FROMMER: Objection. You can  
9 answer.  
10 A. Okay. I would not say a suspect. I  
11 would say a person who has or may have  
12 information relating to what occurred, or maybe  
13 he saw something that occurred.  
14 Q. Okay. Was Mr. -- at the point in  
15 time Mr. Anthony Manganiello left the scene of  
16 the Acosta homicide, was he going to the precinct  
17 voluntarily or was he --  
18 A. Yes.  
19 Q. He was. Okay. At the point in time  
20 you left the scene, were you aware of any  
21 information that in any way connected Anthony  
22 Manganiello to the homicide of Albert Acosta?  
23 MS. FROMMER: Objection. You can  
24 answer.

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1 remember.  
2 Q. I'm taking your best recollection,  
3 sir.  
4 A. I don't recall exactly who it was.  
5 It was -- you have to understand, it was a very  
6 chaotic scene.  
7 Q. Sir, I'm asking you just for your  
8 best recollection. If you don't recall, you can  
9 tell me you don't recall.  
10 A. I don't recall.  
11 Q. Okay. All right. For about  
12 approximately how long did you remain at the  
13 scene of Mr. Acosta's homicide?  
14 A. Under an hour.  
15 Q. Okay. Now, were you made aware --  
16 strike that.  
17 Did any detectives relay to you the  
18 -- any information concerning what a Verizon  
19 employee had said?  
20 MS. FROMMER: Objection.  
21 A. They may have. I don't recall.  
22 Q. Okay. At the point in time when you  
23 left the scene, was Anthony Manganiello a suspect  
24 in the homicide of Albert Acosta?

1 A. Nothing. I may have called the  
2 squad while I was in the field to ask if anything  
3 happened or whatever, but I don't remember the  
4 exact conversation, so I don't recall. No.  
5 Q. Okay. Let me see if maybe I can  
6 make this a little simpler.  
7 A. Sure.  
8 Q. As you sit here right now, do you  
9 have any recollection that at the point in time  
10 that you left the scene of the Acosta murder of  
11 any information that tied Anthony Manganiello to  
12 the homicide of Albert Acosta?  
13 MS. FROMMER: Objection. You can  
14 answer.  
15 A. No.  
16 Q. Where did you go after you left the  
17 scene of the Albert Acosta homicide?  
18 A. I went to the 4-3 detective squad,  
19 my office.  
20 Q. Okay. And was Mr. -- was Anthony  
21 Manganiello in the 4-3 squad?  
22 A. Yes, he was.  
23 Q. Was he under arrest when you  
24 arrived?



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- 1 A. No.
- 2 **Q. Was he free to leave?**
- 3 A. If he chose to do so. I imagine he
- 4 was free to leave if he wasn't under arrest.
- 5 **Q. Okay. Do you recall approximately**
- 6 **what time you arrived at the 4-3?**
- 7 A. No.
- 8 **Q. Where was Anthony Manganiello at the**
- 9 **point in time when you arrived?**
- 10 A. He was sitting in a straight-back
- 11 chair in what we called our lunchroom, and there
- 12 may have been a detective in there with him. I
- 13 remember people going in and out.
- 14 **Q. Okay.**
- 15 MS. FROMMER: Just answer the
- 16 question. The question was where was
- 17 Anthony Manganiello, so you answered it.
- 18 Thank you.
- 19 A. In the lunch room.
- 20 **Q. Okay. Do you recall who if anybody**
- 21 **was with him in the lunchroom at the point in**
- 22 **time when you arrived?**
- 23 A. No.
- 24 **Q. Okay. At the point in time when you**
- 1 arrived, was any information conveyed to you
- 2 concerning Anthony Manganiello?
- 3 A. Yes.
- 4 MS. FROMMER: Objection.
- 5 **Q. What information, if any, was**
- 6 **conveyed to you and by whom?**
- 7 A. One of the detectives, it may have
- 8 been Agostini, said to me that Mr. Manganiello
- 9 was not feeling well, and that he would like to
- 10 go to the hospital or have an ambulance respond.
- 11 And I looked in the room at him and -- at Mr.
- 12 Manganiello, and he looked kind of pale. And I
- 13 grabbed a radio, and I requested that an
- 14 ambulance respond to the 4-3 squad.
- 15 **Q. Okay. And was anything -- this**
- 16 **detective who may have been Agostini, say**
- 17 **anything else to you other than what you just**
- 18 **indicated to us?**
- 19 A. I don't recall.
- 20 **Q. Okay. By the way, were you aware**
- 21 **that -- strike that.**
- 22 **Had you received any information**
- 23 **that Anthony Manganiello either collapsed or**
- 24 **fainted upon learning that Mr. Acosta had been**
- 1 shot --
- 2 MS. FROMMER: Objection.
- 3 **Q. -- at the scene of the incident?**
- 4 A. You just refreshed my memory about
- 5 that.
- 6 **Q. Okay.**
- 7 A. I remember him, as I stated earlier,
- 8 Mr. Manganiello looked pale and sweaty and
- 9 disheveled. I saw him, he didn't faint or hit
- 10 the floor or fall on the floor, but he did look
- 11 like was in distress.
- 12 **Q. And one's partner being shot is**
- 13 **obviously a distressful event; correct?**
- 14 MS. FROMMER: Objection.
- 15 A. If it was me, yes. Yeah.
- 16 **Q. Okay. And so it would be nothing**
- 17 **unusual for a person whose partner had just been**
- 18 **shot to be in distress; would it?**
- 19 MS. FROMMER: Objection.
- 20 A. I imagine so, yes.
- 21 **Q. You imagine it would be unusual, or**
- 22 **you imagine it would not be unusual?**
- 23 A. The question was again?
- 24 MR. JOSEPH: Read the question back.

55

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(The requested testimony was  
read back.)

A. The answer to that would be no.

**Q. Okay.**

MR. JOSEPH: Off the record.

(An off-the-record  
discussion was held.)

BY MR. JOSEPH:

**Q. So aside from -- was Mr. Manganiello**  
**free to leave and go to the hospital at that**  
**point?**

A. Yes.

**Q. Okay. Do you know -- well, did he**  
**go to the -- did Mr. Anthony Manganiello leave**  
**and go to the hospital?**

A. Not at that time.

**Q. Do you know why not?**

A. Because an ambulance was responding  
to the squad.

**Q. Okay. And after the ambulance**

15 (Pages 54 to 57)

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1 responded to the squad, what happened?  
2 A. It was relayed to me that Mr.  
3 Manganiello was fine.  
4 Q. By whom?  
5 A. By one of the EMS attendants.  
6 Q. Okay.  
7 A. Who it was, I do not remember.  
8 Q. Okay. And by the way, when you saw  
9 Mr. Manganiello sitting in the lunchroom, what if  
10 anything was he wearing?  
11 A. He was wearing a coat; a blue,  
12 nylon-type kind of Parkchester security coat. I  
13 think a blue, you know, a uniform shirt. The  
14 shirt was open and he had on a white undershirt  
15 under that, and a belt with some keys on it.  
16 Q. Okay. And at any point, was the  
17 jacket taken from him?  
18 A. I don't -- yes, it was. Yeah.  
19 Q. Can you tell me when it was taken  
20 from him?  
21 A. No.  
22 Q. Can you tell me why the jacket was  
23 taken from him?  
24 A. For tests to be done.  
59  
1 Q. Okay. And whose idea was it to take  
2 the jacket?  
3 MS. FROMMER: Objection.  
4 A. I don't remember exactly. It may  
5 have been the detective.  
6 Q. Did you authorize -- strike that.  
7 Before taking the jacket, did the  
8 detectives ever come and talk to you about taking  
9 the jacket and doing testing?  
10 A. They may have. I don't recall.  
11 Q. Okay. At any point, did the  
12 detectives come and talk to you about doing  
13 gunshot residue tests on Mr. Manganiello's hands?  
14 A. Yes.  
15 Q. And did you authorize that to be  
16 done?  
17 A. I don't have to authorize it. It's  
18 part of the investigation if a person is willing  
19 to do it, yeah.  
20 Q. Okay. Was it your understanding  
21 that Mr. Manganiello was willing to allow the  
22 gunshot residue tests to be done on his hands?  
23 A. Yes.  
24 Q. Okay. And can you tell me why this  
1 detective wanted to take Mr. Manganiello's jacket  
2 and do gunshot residue testing on his hands?  
3 MS. FROMMER: Objection.  
4 A. Could I tell you why, no.  
5 Q. Did he convey it to you? Did he  
6 tell you this is why I want to do the testing?  
7 A. I don't recall.  
8 Q. Okay. What was the sum and  
9 substance of the conversation concerning doing  
10 testing for gunshot residue on Mr. Manganiello's  
11 hands?  
12 A. I don't recall that either.  
13 Q. Okay. At any point, did any  
14 detective on -- strike that.  
15 On February 12th, 2001, did your  
16 view of Mr. Manganiello as of someone who had  
17 information change?  
18 MS. FROMMER: Objection.  
19 A. I don't recall really.  
20 Q. Okay. At any point on February  
21 12th, 2001, did you learn of any evidence that in  
22 any way suggested that Anthony Manganiello was  
23 responsible for the death of Albert Acosta?  
24 MS. FROMMER: Objection.  
61  
1 A. No.  
2 Q. Okay. Do you know if Anthony  
3 Manganiello, at any point, was arrested on  
4 February 12th, 2001, for the murder of Albert  
5 Acosta?  
6 A. No.  
7 Q. Is the arrest of a suspect in a  
8 murder case by a detective something that in  
9 February 2001 would have been reported to you?  
10 A. Yes.  
11 MS. FROMMER: Objection.  
12 Q. Was there any procedure in place in  
13 February of 2001, more specifically February  
14 12th, 2001, whereby you would review evidence  
15 prior to an arrest being made in a homicide case?  
16 MS. FROMMER: Objection.  
17 A. Yes.  
18 Q. On February 12th, 2001, did you  
19 ever review what evidence there was that Mr.  
20 Anthony Manganiello had been responsible for the  
21 death of Albert Acosta?  
22 A. No.  
23 Q. Did anybody in the 43rd Precinct of  
24 a supervisory level review what evidence, if any,



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1 existed to charge Anthony Manganiello with the  
2 murder of Albert Acosta?

3 MS. FROMMER: Objection.

4 A. To answer your question, I have to  
5 explain that it's not just up to a detective or a  
6 detective supervisor. It has to be, in the Bronx  
7 County, it has to be accepted by the District  
8 Attorney's Office.

9 Q. Okay.

10 A. They are the one's that can only  
11 authorize an arrest for homicide.

12 Q. Okay. Before we get to that point,  
13 before a case is presented to an Assistant  
14 District Attorney, is there a custom –  
15 customarily a review done by someone other than  
16 the detective who was working the case?

17 MS. FROMMER: Objection.

18 A. For sure, yeah.

19 Q. Okay. And can you tell me who, if  
20 anyone, was responsible on February 12th, 2001,  
21 to review whether there was sufficient evidence  
22 to charge Anthony Manganiello with the murder or  
23 Albert Acosta?

24 MS. FROMMER: Objection.

1 A. It's a bit of a long question.

2 Q. All right. On February 12th, 2001,  
3 whose job was it to review whether there was  
4 sufficient evidence to charge Anthony Manganiello  
5 with the murder of Albert Acosta?

6 MS. FROMMER: Objection.

7 A. The detective and the supervisor  
8 that was there.

9 Q. Okay. And what detective are you  
10 referring to specifically?

11 A. That would be the officer that  
12 caught the case.

13 Q. And what officer or detective caught  
14 the Albert Acosta case?

15 A. Luis Agostini, detective.

16 Q. And who was the supervisor then?  
17 Was there a particular supervisor that also  
18 caught this case?

19 MS. FROMMER: Objection.

20 A. No. No.

21 Q. Okay. Was there a particular  
22 supervisor that was responsible to review the  
23 evidence on the Albert Acosta case to determine  
24 whether there was sufficient evidence to charge

1 Anthony Manganiello with the murder of Albert  
2 Acosta?

3 MS. FROMMER: Objection.

4 A. No.

5 Q. Okay. Do you know if any supervisor  
6 ever on February 1st, 2001 – I'm sorry, February  
7 12th, 2001 – let me strike that.

8 Do you know if on February 12th  
9 2001, any supervisor reviewed the evidence  
10 against Anthony Manganiello to determine if there  
11 was sufficient evidence to charge him with the  
12 murder of Albert Acosta?

13 MS. FROMMER: Objection. If you  
14 know, you can answer.

15 A. Yes, that would be something that I  
16 would do, and then I would relay that information  
17 to the Bronx District Attorney's office who says  
18 whether there can be an arrest or not an arrest.

19 Q. Okay. Now, did you review, on  
20 February 12th, 2001, or the early morning hours  
21 of February 13th, 2001, did you review the  
22 evidence against Anthony Manganiello –

23 MS. FROMMER: Objection.

24 Q. – concerning whether there was

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1 sufficient evidence to charge him with the death  
2 of Albert Acosta?

3 A. I would say that I did review it and  
4 relayed it to the District Attorney, and if there  
5 wasn't enough evidence, then they would not  
6 authorize an arrest.

7 Q. Okay. Did you, prior to speaking  
8 with a district attorney, make a determination  
9 that there was sufficient evidence to charge  
10 Anthony Manganiello with the homicide of Albert  
11 Acosta?

12 MS. FROMMER: Objection.

13 A. No.

14 Q. At any point on February 12th, 2001,  
15 or February 13th, 2001, did you present the case  
16 against Anthony Manganiello to any district  
17 attorney in the Bronx County?

18 MS. FROMMER: Objection.

19 A. I relayed information to the  
20 district attorney, yes, pertaining to the case.

21 Q. Do you recall the name of the  
22 district attorney?

23 A. No, I do not.

24 Q. Would the name Dondes, D-O-N-D-E-S,

17 (Pages 62 to 65)

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1 take Mr. Manganiello from the lunchroom area and  
2 put him in the cell area?

3 MS. FROMMER: Objection.

4 A. No.

5 Q. Would a -- do you know -- strike  
6 that.

7 Was there any particular person who  
8 was authorized to make that decision at the 43rd  
9 Department to bring a willing witness and place  
10 him into a cell?

11 MS. FROMMER: Objection.

12 A. No.

13 Q. Okay. Did Lieutenant Agostini have  
14 that authority to place a witness into a cell?

15 MS. FROMMER: Objection.

16 A. Detective Agostini.

17 Q. Yes.

18 A. You said Lieutenant Agostini.

19 Q. Oh, I'm sorry. Did Detective  
20 Agostini have that authority --

21 MS. FROMMER: Objection.

22 Q. -- on his own?

23 A. On his own and -- no.

24 Q. Okay. Whose authority, if any, did

1 Q. When you saw Anthony Manganiello in  
2 the cell, what if anything did you do?

3 A. Nothing that I remember.

4 Q. Did you ask anybody why he was in  
5 the cell?

6 A. I may have. I don't remember.

7 Q. Okay. Do you recall having any  
8 conversation at all with anybody about Anthony  
9 Manganiello being in a cell?

10 A. I may have had a conversation with  
11 the district attorney later on in the day, and I  
12 really don't remember the content of it.

13 Q. Okay. And let me take a step back.  
14 At any point -- strike that.

15 Did you permit Mario Manganiello to  
16 speak with his brother? Strike that.

17 Do you know if Mario Manganiello was  
18 permitted to speak with his brother, Anthony  
19 Manganiello?

20 A. Yes, he was.

21 Q. Okay. And by the way, but prior to  
22 his speaking -- prior to Mario Manganiello  
23 speaking with Anthony Manganiello, did Luis  
24 Agostini convey any information to you that

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1 Detective Agostini need -- sorry. Strike that.

2 Whose permission, if any, did  
3 Detective Agostini need to place Mr. Manganiello  
4 in a cell from the lunch area?

5 MS. FROMMER: Objection.

6 A. Well, if he was arresting him for  
7 homicide, it would be the Bronx District  
8 Attorneys' Office, the A.D.A. that responded.

9 Q. Do you know if an A.D.A. ever  
10 provided such authorization on February 12th or  
11 February 13th of 2001, to Detective Agostini?

12 MS. FROMMER: Objection.

13 A. No, I do not.

14 Q. Had a district attorney provided  
15 Detective Agostini with permission to place Mr.  
16 Manganiello under arrest, is that something you  
17 would have been made aware of?

18 A. If I was in the immediate area, yes.

19 Q. Okay. Were you in the immediate  
20 area from the point in time Mr. Anthony  
21 Manganiello was in the lunchroom until the point  
22 in time he was placed in the cell?

23 MS. FROMMER: Objection.

24 A. I really don't recall that.

1 Anthony Manganiello had provided to him?

2 MS. FROMMER: Objection. You can  
3 answer.

4 A. I don't remember.

5 Q. Okay. What if anything happened  
6 after Mario Manganiello spoke with Anthony  
7 Manganiello?

8 A. I remember asking Mr. -- his  
9 brother, Mr. Mario Manganiello, I remember asking  
10 him to leave the squad room.

11 Q. And for what reason did you ask him  
12 to leave the squad room?

13 A. Because he was disruptive,  
14 borderline discourteous, and he seemed very  
15 agitated.

16 Q. Okay. Did he also indicate that he  
17 was calling a lawyer for his brother?

18 A. I remember him saying, oh, my God  
19 and asking for a telephone. And I showed him  
20 where a telephone was outside of the squad room.

21 Q. Okay. And what did he say, oh, my  
22 God, in response to?

23 A. He asked me if his brother was being  
24 arrested or if his brother was a suspect or if

21 (Pages 78 to 81)

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1 officers to believe that he was in some was  
2 related -- in some was responsible for the death  
3 of Albert Acosta?

4 MS. FROMMER: Objection.

5 A. I can't say what they were thinking.  
6 I have -- I don't know.

7 Q. I'm not asking you what they were  
8 thinking, I'm asking you what they -- what if  
9 anything they said to you.

10 MS. FROMMER: That was a prior  
11 question. To the extent someone asked  
12 that to you, you can answer.

13 A. If you could just ask that question  
14 again --

15 Q. Sure.

16 A. -- because it was confusing.

17 Q. Did any of the detectives in the  
18 43rd squad say anything that led you to believe  
19 that they believed Mr. Manganiello was involved  
20 in the death of Anthony [sic] Acosta because he  
21 had retained a lawyer?

22 MS. FROMMER: Objection.

23 A. No, that wouldn't be -- no.

24 Q. Okay. And that would not be a valid

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1 basis to make such an assumption; correct?

2 MS. FROMMER: Objection.

3 A. I would guess so.

4 Q. You may have misunderstood the  
5 question. Is it -- in your professional  
6 judgment, is it a valid assumption to make that  
7 because one retains an attorney, they must be  
8 guilty of a crime?

9 A. No.

10 MS. FROMMER: Objection.

11 Q. Okay. Would you permit the  
12 detectives working under your supervision to make  
13 such an assumption?

14 MS. FROMMER: Objection.

15 Q. Strike that.

16 On February 12th, 2001, and/or  
17 February 13th 2001, did you permit the detectives  
18 working under your command to make that sort of  
19 an assumption?

20 MS. FROMMER: Objection.

21 A. I would not do that, no.

22 Q. Okay. Now, by the way, in February  
23 of 2001, were you a smoker?

24 A. Yes, I indulged in cigars.

1 Q. Okay. At any point on February

2 12th, 2001, did you smoke a cigar outside of the  
3 43rd Precinct?

4 A. Yes.

5 Q. And while you were smoking a cigar,  
6 did you see or speak with Mario Manganiello?

7 A. I don't recall that.

8 Q. Okay. Do you have any recollection  
9 of a conversation with Mario Manganiello, which  
10 occurred outside of the 43rd Precinct while you  
11 were smoking a cigar and he was smoking a  
12 cigarette?

13 A. No.

14 MS. FROMMER: Objection.

15 Q. Okay. Did you see -- do you have  
16 any recollection of seeing Mario Manganiello  
17 outside of the 43rd Precinct smoking a cigarette?

18 MS. FROMMER: Objection.

19 A. No.

20 Q. Okay. At any point -- I'll strike  
21 that.

22 At some point after you learned that  
23 an attorney had been obtained, did Mr. Mario  
24 Manganiello leave the squad room?

8

1 A. I asked Mario Manganiello to leave  
2 the squad room.

3 Q. And did he comply?

4 A. Yes.

5 Q. Okay. And was he -- by the way, was  
6 he with an older gentleman that appeared to be  
7 his father?

8 MS. FROMMER: Objection.

9 A. I don't recall.

10 Q. Okay. And do you know if -- what if  
11 anything -- did you see -- after Mr. Manganiello  
12 left the squad room, did you see him again on  
13 February 12, 2001?

14 A. Yes, I did.

15 Q. And how did you come to see him?

16 MS. FROMMER: Objection. You can  
17 answer.

18 A. Well, me being in the squad room  
19 when he walked in again, I saw him.

20 Q. Okay. Now, did he -- when did he  
21 walk in again?

22 A. I don't recall exactly.

23 Q. Can you give me an approximate -- an  
24 approximation of how much time passed --

23 (Pages 86 to 89)



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1 Q. Okay. Do you have any recollection  
2 of speaking with Sergeant McGovern between the  
3 point in time when Mr. Manganiello left the  
4 precinct at your request and the point in time he  
5 was brought back by a uniformed officer?

6 MS. FROMMER: Objection.

7 A. I don't recall.

8 Q. Now, was Mario Manganiello placed  
9 under arrest for possession of a handgun?

10 A. I think he was being held for an  
11 investigation.

12 Q. Well, my question is: Was he placed  
13 under arrest?

14 MS. FROMMER: Objection.

15 A. You know, I honestly don't recall.

16 Q. Okay. Are you aware — did you —  
17 are you aware of whether New York State — sorry.  
18 Strike that.

19 Do you know a — were you that Mr.  
20 Manganiello was a sergeant in the Mount Vernon  
21 Police Department?

22 A. Sometime during the night, that was  
23 brought to my attention.

24 Q. Was it brought to your attention

1 point, did you ever have any indication that the  
2 firearm which Mario Manganiello was carrying was  
3 not a registered authorized firearm?

4 MS. FROMMER: Objection.

5 A. I don't think Mr. Manganiello was  
6 authorized to carry it in the confines of New  
7 York City.

8 Q. Okay. Well, let me ask you this:  
9 Sir, was Mario Manganiello ever placed under  
10 arrest for carrying a firearm?

11 MS. FROMMER: Objection. Are we  
12 gonna litigate Mario, which can't be  
13 litigated or --

14 A. Like I said earlier --

15 MS. FROMMER: Let me get my  
16 objection on the record.

17 THE WITNESS: Oh, I'm sorry.

18 MS. FROMMER: Are we gonna litigate  
19 Mario, which can't be litigated under law,  
20 or are we gonna litigate Anthony? Because  
21 you can't litigate Mario. I was gonna  
22 make that on the record.

23 MR. JOSEPH: Okay.

24 MS. FROMMER: So I'm only gonna

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1 before or after he was returned with a uniformed  
2 police officer?

3 MS. FROMMER: Objection.

4 A. You know, I really don't remember.

5 Q. Okay. Are you aware of any law that  
6 prohibits a sergeant, off duty, from carrying a  
7 pistol?

8 MS. FROMMER: Objection. You can  
9 answer.

10 A. Carrying a pistol --

11 Q. A firearm.

12 MS. FROMMER: The question was  
13 whether any off-duty sergeant is permitted  
14 to carry a pistol, if you're aware of any  
15 law that permits that.

16 A. Well, if you're in New York City and  
17 you're a New York City Police sergeant and you're  
18 authorized to carry a firearm, you may carry a  
19 firearm in New York City.

20 Q. Okay. And are you also authorized  
21 to carry a firearm in New York State?

22 A. If it's an authorized, registered  
23 firearm, yeah. I imagine you could, yes.

24 Q. Okay. And did you ever -- at any

1 permit about five more minutes of  
2 questioning about Mario Manganiello to the  
3 extent it is not related to Anthony. And  
4 then I'm going to instruct him not to  
5 answer any more questions about that. You  
6 can re-ask the question. You can answer.

7 Q. Do you know what the question was?  
8 A. No.

9 MS. FROMMER: Or you can have the  
10 court reporter read back.

11 Q. What was -- was Mario Manganiello  
12 ever arrested for possessing a firearm?

13 MS. FROMMER: Objection.

14 A. Okay. As I stated earlier, he was  
15 brought in for investigation, and I don't recall  
16 if he was arrested.

17 Q. Do you know who authorized him to be  
18 detained?

19 MS. FROMMER: Objection.

20 A. That may have been a patrol  
21 supervisor at the scene of White Plains Road  
22 where he had some incident there.

23 Q. Was Geryl McCarthy at White Plains  
24 Road?

25 (Pages 94 to 97)

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1 sitting in -- who was serving a sentence in  
 2 Rikers Island?  
 3 MS. FROMMER: Objection.  
 4 A. Sorry, I don't recall.  
 5 Q. Okay. Do you have any recollection  
 6 whatsoever concerning this so-called confidential  
 7 informant?  
 8 MS. FROMMER: Objection.  
 9 A. I remember hearing about it, but I  
 10 really don't remember anything about it, no.  
 11 Q. Did you ever inquire as to any  
 12 criminal activities which these confidential  
 13 informants may have been engaged in?  
 14 MS. FROMMER: Objection.  
 15 A. If I have a dealing with a  
 16 confidential informant, it's required that you do  
 17 a background investigation and check on them,  
 18 yes.  
 19 Q. Okay. And is that something that  
 20 would also be kept as part of the case folder?  
 21 A. Actually, that would be kept  
 22 separate into a -- the C.I.'s folder, which would  
 23 be locked in a, you know, a separate area.  
 24 Q. Okay. And who had access to the

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1 C.I.'s folder in this case?  
 2 MS. FROMMER: Objection.  
 3 A. I have no idea.  
 4 Q. Okay. Do you how this -- do you  
 5 have any recollection of what this -- how this  
 6 gentleman had become a confidential informant?  
 7 A. No.  
 8 MS. FROMMER: Objection.  
 9 Q. Okay. Do you know who -- was the  
 10 confidential informant file kept at the 43rd  
 11 Precinct?  
 12 MS. FROMMER: Objection.  
 13 A. If it was a 4-3 detective  
 14 confidential informant, they would have a file in  
 15 the 4-3 as directed by guidelines, but I don't  
 16 know -- I don't know whose C.I. it was.  
 17 Q. Okay. But what would be contained  
 18 in that file?  
 19 MS. FROMMER: Objection.  
 20 A. Confidential information.  
 21 Q. I'm not asking for the specific  
 22 confidential information, I'm asking what  
 23 categories of documents or what -- what would --  
 24 is there a form that this confidential

1 information was recorded on?  
 2 A. Well, I don't think the information  
 3 they have would go into his file, the C.I.'s  
 4 file. It would go into the case file if it was  
 5 information.  
 6 Q. Okay. And, but what was the purpose  
 7 of doing the background check on each  
 8 confidential informant?  
 9 MS. FROMMER: You're asking general  
 10 questions; right? Because he said he had  
 11 no dealing with the confidential  
 12 informant.  
 13 MR. JOSEPH: No, no. I'm talking  
 14 about the procedure.  
 15 Q. Sir, did you testify that it was the  
 16 standard procedure or the required procedure to  
 17 do a background check on a confidential  
 18 informant?  
 19 MS. FROMMER: Objection. That is  
 20 not was his testimony was. His testimony  
 21 was if he dealt with a confidential  
 22 informant, it was something that he would  
 23 do. That does not -- not testimony about  
 24 standard operating procedure.

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1 MR. JOSEPH: I'll retract the  
 2 question.  
 3 MS. FROMMER: Okay.  
 4 Q. Sir, was there a requirement in the  
 5 43rd Precinct that, when dealing with a  
 6 confidential informant, you had to do a  
 7 background check?  
 8 MS. FROMMER: Objection.  
 9 A. I'm not so sure about that. When I  
 10 was in narcotics investigations, we would do a  
 11 background check on the confidential informant  
 12 and kind of just see if they were credible.  
 13 Q. Okay. And what information were you  
 14 looking for to determine whether the confidential  
 15 informant was credible?  
 16 MS. FROMMER: You mean general  
 17 information?  
 18 MR. JOSEPH: Yeah.  
 19 MS. FROMMER: You can answer.  
 20 A. Well, they may be giving you  
 21 information because they want to work off some  
 22 time on an ongoing pending charge or something.  
 23 Q. Right.  
 24 A. Or they may do it for a monetary or

27 (Pages 102 to 105)

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1 who knows, revenge. I don't know.  
 2 Q. And are these all factors that a  
 3 detective should consider when evaluating the  
 4 information provided by a confidential informant?

5 A. Sure.

6 Q. Okay. And is that the standard  
 7 practice and procedure at the 43rd Precinct –

8 MS. FROMMER: Objection.

9 Q. – in February of 2001?

10 MS. FROMMER: Objection.

11 A. To be honest, I don't know if the  
 12 4-3 had any C.I.'s, confidential informants, at  
 13 that time, so I don't know.

14 Q. Well, at some point, did you become  
 15 aware that there had been information provided by  
 16 a so-called confidential informant in the case  
 17 against Anthony Manganiello?

18 A. Yes.

19 Q. And were you aware of whether –  
 20 strike that.

21 Do you know how this confidential  
 22 informant came to be in contact with the  
 23 detectives at the 43rd Precinct?

24 MS. FROMMER: Objection.

1 A. I think you asked me that earlier,  
 2 but I think he was referred to them by someone  
 3 else. I don't recall who.

4 Q. Okay. And would a background –  
 5 strike that.

6 Do you know if a background check  
 7 was performed on this particular individual, this  
 8 confidential informant?

9 A. No, I don't.

10 Q. Okay.

11 A. I do not know.

12 Q. Would you find – strike that.

13 Would you find it unusual if a  
 14 background check had not been performed on a  
 15 confidential informant providing information in a  
 16 murder case?

17 MS. FROMMER: Objection.

18 A. Well, as I stated earlier, a handler  
 19 of a C.I., the person that the C.I. is registered  
 20 to, would do a background check on the person.

21 Q. Okay.

22 A. If the C.I. is relaying information  
 23 to a detective in another squad, I guess, maybe  
 24 it might be up to the detective's judgment if he

1 wants to do a background check on the C.I. or  
 2 not. He's not registered to that detective.

3 Q. Okay. Now, what do you – when  
 4 you're saying "registered," what does that mean,  
 5 registered?

6 A. There is a certain procedure that a  
 7 C.I. has to be registered. And also a C.I. has  
 8 to be interviewed by the detective that's going  
 9 to sign him up and a supervisor is involved. At  
 10 least, I know, in narcotics, we did it that way.

11 Q. Okay. And is it ever permissible to  
 12 allow a confidential informant to commit crimes  
 13 without punishment in exchange for information?

14 MS. FROMMER: Objection.

15 A. I think that's very ridiculous. And  
 16 no, I would say no.

17 Q. Okay. Do you know if there was a  
 18 known loan shark acting as a confidential  
 19 informant in the prosecution of Anthony  
 20 Manganiello?

21 MS. FROMMER: Objection.

22 A. No, I don't know.

23 Q. Okay. Did you at any point become  
 24 aware that a confidential informant had admitted

1 to selling a firearm to Anthony Manganiello?

2 A. I did hear that, yeah.

3 Q. Okay. At any point, was that  
 4 confidential informant arrested for that crime?

5 A. I don't know.

6 Q. Did you – in your judgment, should  
 7 that confidential informant have been arrested  
 8 for selling a firearm?

9 MS. FROMMER: Objection.

10 A. I guess that would be up to the  
 11 district attorney.

12 Q. Okay. Do you know – strike that,  
 13 sir.

14 Is the sale of a firearm in 2001,  
 15 was that a felony?

16 MS. FROMMER: Objection.

17 A. I would say so.

18 Q. Okay. Now, at any point, were you  
 19 made aware that a confidential informant admitted  
 20 to conspiring to the murder of a Parkchester  
 21 security guard –

22 MS. FROMMER: Objection.

23 Q. – in exchange for money?

24 A. No, I don't recall that.

28 (Pages 106 to 109)



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1 Q. Okay. Had you been made aware of  
2 that, would that confidential informant have been  
3 arrested?  
4 MS. FROMMER: Objection.  
5 A. It depends on the circumstances. If  
6 there was credibility to it, if it was  
7 investigated, and it was found to be true, then  
8 yeah, I guess, I would. Yeah.  
9 Q. Do you know if a gentleman named  
10 Terence Alton was ever arrested for conspiracy to  
11 commit murder for hire?  
12 MS. FROMMER: Objection.  
13 A. No, I don't know.  
14 Q. At any point, did you become aware  
15 of a -- strike that.  
16 Sir, would the fact that -- what  
17 influence -- how can I phrase this for you? Is  
18 one of the factors in judging the credibility of  
19 a confidential informant, whether he's given  
20 false information in the past?  
21 MS. FROMMER: Object to the form.  
22 You can answer.  
23 A. Yeah, that would be -- yeah.  
24 Q. Okay. Were you aware of whether or

1 such a -- if that had transpired?  
2 MS. FROMMER: Objection.  
3 A. Can you repeat the --  
4 Q. Sure.  
5 A. -- alleged offense or whatever you  
6 were saying.  
7 MR. JOSEPH: All right. I'll tell  
8 you what, let's have this marked,  
9 two-paged document, marked.  
10  
11 (Plaintiff's Exhibit 9,  
12 DD-5 REGARDING ALSTON, was  
13 marked for identification.)  
14  
15 MS. FROMMER: Mr. Joseph handed th  
16 witness the two-paged document to show it  
17 to him, and I just want to put on the  
18 record that I have seen this two-paged  
19 document, but there are asterisks and  
20 handwritten notes on the margins as well  
21 as certain words have been circled on this  
22 document.  
23 MR. JOSEPH: Again, that how it came  
24 to me and I have no --

11

1 not Terence Alton had provided false information  
2 to Detective Agostini in -- concerning the  
3 investigation of the death of Albert Acosta?  
4 MS. FROMMER: Objection.  
5 A. I have absolutely no idea.  
6 Q. At any point, were you made aware  
7 that a confidential informant named Terence  
8 Alton told Detective Agostini and/or Detective  
9 Parker that a friend of his had sold -- named  
10 Johnnie Baker had sold a gun to Mr. Manganiello  
11 and Mr. Baker later denied it?  
12 MS. FROMMER: Objection.  
13 A. I don't recall such a -- hearing  
14 such things.  
15 Q. Is that something that -- if that  
16 were placed in a DD-5 and provided to you, is  
17 something you would have read in 2001?  
18 MS. FROMMER: Objection. You can  
19 answer.  
20 A. If it was in a case folder and it  
21 was on a 5 and I saw it, I would have read it,  
22 and I would have signed the 5, yeah.  
23 Q. Okay. And what if anything would  
24 you have done after you saw the DD-5 indicating

1 MS. FROMMER: Okay.  
2 MR. JOSEPH: Off the record.  
3  
4 (An off-the-record  
5 discussion was held.)  
6  
7 BY MR. JOSEPH:  
8 Q. Now sir, I'll show you what's been  
9 marked as Exhibit number 9. Have you ever se  
10 the document before?  
11 A. I don't recall it.  
12 Q. Now, part of the bottom is cut off,  
13 but do you see anything indicating your signatu  
14 on the bottom?  
15 A. Not really, no.  
16 Q. Okay. Have you had time to review  
17 the document?  
18 A. I just started to read it.  
19 Q. Okay. Take a few minutes.  
20 A. Wow.  
21 Q. Sir, have you ever seen this DD-5  
22 before?  
23 A. I don't recall it.  
24 Q. Okay. Do you see anything on this

29 (Pages 110 to 113)

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1 DD-5 that would indicate that you had signed it  
2 or reviewed it?  
3 A. No.  
4 Q. Okay. Now sir, in this DD-5,  
5 apparently Mr. Alston is admitting to conspiracy  
6 to commit murder; is that correct?  
7 MS. FROMMER: Objection. If you're  
8 asking him to give his opinion as to what  
9 the legal crime is, I'm gonna instruct him  
10 not to answer. If you're asking him to  
11 say that he's committed a legal crime.  
12 He's not in the position to give that  
13 testimony. I'm gonna instruct him not to  
14 answer.  
15 MR. JOSEPH: That's fine.  
16 Q. Sir, after reading what we have here  
17 in Exhibit number 9, do you find this to be  
18 sufficient to warrant an investigation into the  
19 arrest of Terence Alston?  
20 MS. FROMMER: You can answer.  
21 A. You know, if depending upon the  
22 detective, maybe he thought the guy was just full  
23 of shit.  
24 Q. Okay. And if the guy was full of

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1 shit, should his -- any information he provides  
2 be used in a murder investigation?  
3 MS. FROMMER: Objection.  
4 A. If he's full of shit, I would say  
5 no.  
6 Q. Okay. And did you ever have a  
7 conversation with Detective Agostini to determine  
8 whether or not Mr. Alston was full of shit?  
9 A. I don't recall such a conversation.  
10 Q. Sir, have you ever had a  
11 conversation with any other detective in the 43rd  
12 Precinct to determine whether or not Mr. Alston  
13 was full of shit?  
14 A. You know, I don't know Mr. Alston,  
15 and I don't recall having any conversations with  
16 detectives about someone I don't know or  
17 remember.  
18 Q. If Exhibit 9 were in the case file  
19 for the homicide of Albert Acosta, would it be  
20 unusual if you didn't see this?  
21 MS. FROMMER: Can you repeat that?  
22 MR. JOSEPH: Strike that. I'll  
23 rephrase it. Sure.  
24 Q. If this was a document -- if Exhibit

1 9 is a document that was produced in the ordinary  
2 course of the investigation into the homicide of  
3 Albert Acosta, is this something that would have  
4 been presented to you?  
5 A. For review, yes. I would have -- if  
6 it was in the case folder, I would have seen it.  
7 Q. And at any point -- after seeing  
8 this, what action, if any, would you have taken?  
9 MS. FROMMER: Objection.  
10 A. Maybe I would have talked to  
11 Bencenvingo. I think I saw the name Parker here  
12 from Intel, his C.I. I would ask him, is your  
13 C.I. credible.  
14 Q. Okay.  
15 A. I would speak to Robert Ramos who  
16 did this 5.  
17 Q. Sir, did you ever speak to Ramos and  
18 Bencenvingo or Parker?  
19 MS. FROMMER: Well, he testified  
20 earlier that he didn't see the --  
21 MR. JOSEPH: I'm not asking him if  
22 he ever did.  
23 MS. FROMMER: -- and the DD-5 and  
24 his answer, that he just gave, was if he

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1 had seen it --  
2 MR. JOSEPH: Right.  
3 MS. FROMMER: -- that is what he  
4 would have done, so I think you're asking  
5 a loaded question. If you can properly  
6 answer the question, you can tell him  
7 that.  
8 A. Well, Ramos, I believe, was assigned  
9 to the 4-3 so, yes, I talked with him.  
10 Bencenvingo was assigned to the Ram unit, which  
11 is next door to the squad, so yes, I've talked  
12 with him also. This guy Parker, I don't  
13 remember. And I guess that answers your  
14 question.  
15 Q. Okay. Was there anybody -- any  
16 other supervisors who was supervising or  
17 overseeing the investigation into the homicide of  
18 Albert Acosta to whom a DD-5 such as Exhibit  
19 number 9 would have been presented for review,  
20 other than yourself?  
21 A. Sure.  
22 Q. Who?  
23 A. Lieutenant John McGovern, who at the  
24 time, was a sergeant.

30 (Pages 114 to 117)

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1 Q. Okay.

2 A. I think Sergeant Chris Napolitano  
3 was in the command at that time. And if I was  
4 not there, or if they were not there, it would be  
5 a supervisor from another command in the  
6 detective bureau.

7 Q. Do you have — do you ever — do you  
8 have a recollection of ever having a conversation  
9 generally with either Sergeant McGovern, Ramos,  
10 Agostini, Bencenvigo concerning whether a C.I.  
11 on the Manganiello case was full of shit?

12 MS. FROMMER: Objection.

13 A. I recall having a conversation with  
14 — it may have been Agostini, it may have been  
15 Abate, about a C.I.'s involvement, but I think, I  
16 think it was several months later, and I was in  
17 the 5-2 squad at that time.

18 Q. Okay. You say several months later,  
19 can you give me a ballpark approximation?

20 MS. FROMMER: Objection. I really  
21 — no, I can't.

22 Q. Okay. Would that have been after  
23 April of 2001?

24 A. Yes, I think it would have been.

1 Q. And can you tell what the sum and  
2 substance, to the best of your recollection, was  
3 concerning that conversation.

4 A. Not really, no. I don't really  
5 recall it very good.

6 Q. Okay. If it had been Sergeant  
7 McGovern or another supervisor who reviewed this  
8 DD-5 that we have here as Exhibit number 9, what  
9 is your expectation of what should have been done  
10 here —

11 MS. FROMMER: Objection.

12 Q. — concerning the contents of this  
13 DD-5?

14 A. Well, I think I explained that  
15 already.

16 Q. Well, I think you told us — here's  
17 what I'm getting at. You told us what you would  
18 do. My question really is: Is that what the  
19 protocol was in February 2001 for other  
20 supervisors, as well?

21 MS. FROMMER: Objection. You can  
22 answer if you can.

23 A. I guess it would depend on the  
24 supervisor.

1 Q. Okay. Sir, was there any clear-cut  
2 guidelines or policies or procedures as to what  
3 to do when confronted with situations such as  
4 see in Exhibit number 9?

5 MS. FROMMER: Objection.

6 A. Well, maybe you could refer, like  
7 what do you — you know, in this 5, what is it  
8 that's jumping out at you there?

9 Q. Well, let me ask you this: In  
10 Exhibit number 9 assuming Mr. Alston is not full  
11 of shit, what should have been done here —

12 MS. FROMMER: Objection.

13 Q. — if anything?

14 MS. FROMMER: Objection. Do you  
15 understand the question?

16 THE WITNESS: I think I do, but I  
17 guess he just doesn't understand the  
18 response.

19 Q. Let me — I'll rephrase it then.

20 Sir, assuming Mr. Alston is not full of shit, if  
21 a supervisor reads Exhibit number 9, should the  
22 supervisor commence some sort of criminal action  
23 against or commence some sort of criminal  
24 investigation against Mr. Alston?

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1 MS. FROMMER: Objection.

2 A. As I said earlier, you would ask  
3 about his credibility. You would refer with  
4 Detective Parker. You would speak with Ramos,  
5 Bencenvigo, and anybody else involved that has  
6 dealings with this person, Mr. Alston. And maybe  
7 you would have a different feeling then or maybe  
8 you would not.

9 Q. Let me ask you this: Would there be  
10 records kept if there were an investigation  
11 speaking to Bencenvigo, Parker, and the other  
12 gentlemen you mentioned concerning this  
13 particular C.I.?

14 MS. FROMMER: Objection.

15 Q. Would there be a record generated or  
16 some kind of —

17 A. I have no knowledge.

18 Q. Okay. Well, I'm saying is — I'm  
19 not asking of your specific knowledge about  
20 whether there exists a document concerning —

21 A. You're asking me a hypothetical  
22 question.

23 Q. I'm asking you a procedural  
24 question.

31 (Pages 118 to 121)



LIEUTENANT HARRY SCOTT

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1 MS. FROMMER: Objection.  
2 Q. Is there a procedure in place to  
3 create and maintain a document after attempting  
4 to verify the credibility of an informant?  
5 MS. FROMMER: Objection.  
6 A. I guess depending upon the detective  
7 or the supervisor involved; how thorough they  
8 want to be. I guess they would.  
9 Q. Okay. And where would that document  
10 have been kept --  
11 MS. FROMMER: Objection.  
12 Q. -- assuming it was created?  
13 A. Maybe in the folder of the case that  
14 it pertains to or maybe in the C.I.'s  
15 registration folder. You know, I don't know. I  
16 would -- I don't know. I guess it would be in  
17 the handler's folder, the handler's command.  
18 MR. JOSEPH: Okay. Let's have this  
19 marked as --  
20  
21 (Plaintiff's Exhibit 10,  
22 DD-5 REGARDING BAKER, was  
23 marked for identification.)  
24

1 MS. FROMMER: Objection.  
2 Q. -- in your view?  
3 A. Do you mind rephrasing -- I mean,  
4 just repeating the question.  
5  
6 (The requested testimony was  
7 read back.)  
8  
9 A. What would what affect?  
10 Q. Okay. Would the fact that a  
11 confidential informant provided information that  
12 turned out to be false, how would that bear on  
13 the confidential informant's credibility in your  
14 eyes --  
15 MS. FROMMER: Objection.  
16 Q. -- in your opinion --  
17 MS. FROMMER: Objection.  
18 Q. -- or professional judgment?  
19 A. Well, he wouldn't be very credible.  
20 Q. Okay. And in your professional  
21 judgment, should prosecution of a murder case go  
22 forward based on a word of a confidential  
23 informant who turned out not to be credible?  
24 MS. FROMMER: Objection.

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1 Q. For the record, I'm showing you a  
2 one-page document, Plaintiff's Exhibit 10, which  
3 has a statement written on it, where is Baker's  
4 statement, and certain portions are underlined.  
5 Again, it came to me in this condition. Sir, I'm  
6 gonna show you Exhibit number 10 and ask you:  
7 Have you ever seen this document before? Take as  
8 much time as you need to read it over.  
9 A. I can't tell you if saw this or not.  
10 I don't recall it, and I don't see my signature  
11 on it that I signed it.  
12 Q. Okay.  
13 A. I don't recall it.  
14 Q. Okay. Sir, at any point, did you  
15 become aware that a C.I. who was working on the  
16 investigation of the Acosta case provided a name  
17 of somebody who he said sold the gun to Anthony  
18 Manganiello and that later turned out to be  
19 false?  
20 MS. FROMMER: Objection.  
21 A. I don't recall it.  
22 Q. Okay. In such circumstances, what  
23 effect if any would that have on the confidential  
24 informant's credibility --

1 A. I would say that that depends.  
2 There might be other evidence.  
3 Q. Okay.  
4 A. Based solely on the confidential  
5 informant's testimony, I would say not.  
6 Q. Okay. And sir, in August of 2001,  
7 did you become aware that Anthony Manganiello had  
8 become rearrested for the homicide of Albert  
9 Acosta?  
10 MS. FROMMER: In August of 2001?  
11 Q. I'm sorry, April.  
12 MS. FROMMER: You can answer.  
13 A. I remember hearing that, yes.  
14 Q. Okay. Was role, if any, did you  
15 play in making a determination as to whether  
16 Anthony Manganiello should be arrested --  
17 rearrested in April 2001?  
18 MS. FROMMER: Objection.  
19 A. I don't recall that I had any, but  
20 I don't remember. No.  
21 Q. Okay. As a part of a standard  
22 practice, would the -- would Lieutenant Agostini  
23 speak with you before he signed a felony complaint  
24 charging someone with murder?

32 (Pages 122 to 125)



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1

1 MS. FROMMER: Objection.

2 A. If I was in that day, I guess he  
3 would --

4 Q. Okay.

5 A. -- and along with various district  
6 attorneys and sergeant.

7 Q. Now, between February 12th, 2001 --  
8 strike that.

9 Between the time Albert Acosta was  
10 murdered and the point in time that Anthony  
11 Manganiello was rearrested some time in April of  
12 2001, did you ever learn of any evidence that  
13 established probable cause to believe that Mr.  
14 Manganiello was responsible for the death of  
15 Albert Acosta?

16 MS. FROMMER: Objection.

17 A. I don't recall.

18 Q. Okay. Did -- how many supervisor --  
19 well, let me strike that.

20 How was the case against Anthony  
21 Manganiello staffed? In other words, was there a  
22 particular supervisor assigned to that case, or  
23 were different supervisors assigned to that case?

24 MS. FROMMER: Objection. You can

1 Q. Okay. Where would the OLBS report  
2 be kept or stored?

3 A. That should definitely be in the  
4 case folder.

5 Q. Would a copy of it be --

6 A. And if I'm not mistaken, maybe they  
7 did a blap, you know, did it online also.

8 Q. Okay. In April of 2001, was that --  
9 was an OLBS something that was electronically  
10 stored on a computer?

11 A. Not on the day that it is done, but  
12 after that. I don't recall what the time frame  
13 may be.

14 MR. JOSEPH: Let's go off the record  
15 a second.

16 (An off-the-record  
17 discussion was held.)

18 BY MR. JOSEPH:

19 Q. Sir, what's the OLBS?

20 A. It's the online booking sheet.

21 Q. Okay. Now, what responsibilities if  
22 any does a supervisor have prior to signing an

23 OLBS in terms of reviewing the evidence?

24 A. In a homicide case?

1 Q. Correct.

2 A. Oh, okay. Well, after conferring  
3 with the detective and thinking that you may have  
4 probable cause, and then conferring with a  
5 district attorney and getting a mission to  
6 arrest.

7 Q. Okay. Now, you said "may have  
8 probable cause," what do you mean by that?

9 A. Evidence or a witness or -- evidence  
10 or a witness.

11 Q. And as far as -- at any point  
12 between the date of Mr. Acosta's demise and the  
13 date which Anthony Manganiello was arrested in  
14 April 2001, did you ever come across any evidence  
15 or witness that directly tied Mr. Manganiello to  
16 the murder on Albert Acosta?

17 MS. FROMMER: Objection.

18 A. I will say that I don't remember  
19 because I really don't remember.

20 Q. By the way, on the OLBS or anywhere,  
21 would there be some documentation of what  
22 evidence supported that finding of probable

33 (Pages 126 to 129)

1 a statement as concerning the homicide  
2 investigation?  
3 A. No.  
4 Q. And you testified that you did not  
5 testify at the grand jury; is that correct?  
6 A. Correct, I did not.  
7 MS. FROMMER: Okay. I have nothing  
8 further.  
9  
10 FURTHER EXAMINATION BY  
11 MR. JOSEPH:  
12 Q. Sir, on February 12th, 2001, did you  
13 have a radio that -- on which you can hear what  
14 the Parkchester security was broadcasting?  
15 A. If they have a P.D. -- if they have  
16 one of our radios, yeah, I could monitor it.  
17 Q. Well, was there also a radio system  
18 among the security officers at Parkchester?  
19 A. Yes.  
20 Q. Did you have one of those radios?  
21 A. No.  
22 Q. Did you have any ability to monitor  
23 what those Parkchester security officers were  
24 saying back and forth?

1 MS. FROMMER: Objection. You can  
2 answer.  
3 A. No, not on their radio unless I had  
4 one.  
5 Q. Do you know what information --  
6 strike that.  
7 Do you know who provided the  
8 information to the District Attorney's Office  
9 that led to an arrest warrant being issued for  
10 Anthony Manganiello?  
11 A. Other than the case detective, no.  
12 Q. Whose -- was anybody responsible to  
13 monitor what information the case detective was  
14 giving to the District Attorney's Office?  
15 MS. FROMMER: Objection.  
16 A. If they're there physically, yes.  
17 If they're not there, then no.  
18 Q. Do you one know one way or another  
19 whether Detective Agostini manufactured evidence?  
20 MS. FROMMER: Objection. You can  
21 answer.  
22 A. I would say no.  
23 Q. You don't know, or he didn't?  
24 A. I don't know, no.

1 Q. Do you know whether Detective  
2 Agostini used informants that were, in your  
3 words, full of shit?  
4 MS. FROMMER: Objection.  
5 A. No, I do not know.  
6 Q. Okay. Is that something that a  
7 supervisor should know?  
8 MS. FROMMER: Objection.  
9 A. If the supervisor is there; if the  
10 supervisor did a credibility check on the C.I., I  
11 guess, he would know.  
12 Q. Do you know if any supervisor ever  
13 did any credibility checks on any confidential  
14 informants who provided information for the --  
15 further into the prosecution of Anthony  
16 Manganiello?  
17 MS. FROMMER: Objection.  
18 A. I don't know.  
19 Q. Okay. By the way, did you ever  
20 speak with any supervisors regarding the DD-5s  
21 concerning Mr. Alston, Mr. Baker, Mr. Booth, or  
22 Mr. Damon?  
23 MS. FROMMER: Objection.  
24 A. I don't recall.

1 Q. And sir, as you sit here right now,  
2 do you know whether the District Attorney's  
3 Office was provided with fabricated evidence --  
4 MS. FROMMER: Objection.  
5 Q. -- by Detective Agostini or  
6 Detective Abate?  
7 MS. FROMMER: Objection.  
8 A. I wouldn't know.  
9 Q. As you sit here right now, do you  
10 know if any of the -- strike that.  
11 As you sit here right now, do you  
12 know whether Detective Agostini or Detective  
13 Abate allowed confidential informants to commit  
14 criminal acts in exchange for the information  
15 they provided?  
16 MS. FROMMER: Objection.  
17 A. I would say no.  
18 Q. No, you don't know, or no, it didn't  
19 happen?  
20 A. I don't know.  
21 Q. As you sit here right now -- strike  
22 that.  
23 Sir, as you sit here right now, do  
24 you know whether Detective Agostini destroyed



LIEUTENANT HARRY SCOTT

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1 evidence in this case?  
2 MS. FROMMER: Objection. You can  
3 answer.  
4 A. I do not know.  
5 Q. Did you believe Detective Agostini's  
6 explanation for what happened to the case folder  
7 concerning the disappearance of documents further  
8 into the prosecution of Anthony Manganiello?  
9 MS. FROMMER: Objection.  
10 A. I have no reason to not believe him.  
11 Q. Did the explanation provided to you  
12 sound credible?  
13 A. Yes.  
14 Q. By the way, were you aware of any  
15 remodeling that ever happened at the 43rd  
16 Precinct?  
17 MS. FROMMER: Objection.  
18 A. No, but then it could have happened  
19 after I was gone.  
20 MR. JOSEPH: All right. That's all  
21 I have.  
22  
23  
24 (Time noted: 3:30 p.m.)

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1 STATE OF NEW YORK )  
2 ss:  
3 COUNTY OF )  
4  
5  
6 I, LIEUTENANT HARRY SCOTT, hereby certify  
7 that I have read the pages of the foregoing  
8 testimony of this deposition and hereby certify  
9 it to be a true and correct record.  
10  
11  
12  
13  
14 LIEUTENANT HARRY SCOTT  
15  
16  
17  
18  
19 Sworn to before me this  
20 \_\_\_\_ day of \_\_\_\_, 2008.  
21  
22  
23  
24 Notary Public

1 I N D E X  
2  
3 EXAMINATION BY PAGE: 92  
4 MR. JOSEPH: 5:7 37:  
5  
6 EXAMINATION BY 14  
7 MS. FROMMER: 134:22 38:  
8 40:  
9 FURTHER EXAMINATION BY  
10 MR. JOSEPH: 138:10  
11  
12  
13 (Plaintiff's Exhibit 9, 112:11  
14 DD-5 REGARDING ALSTON, was  
15 marked for identification.)  
16  
17 (Plaintiff's Exhibit 10, 122:21  
18 DD-5 REGARDING BAKER, was  
19 marked for identification.)  
20  
21  
22  
23  
24  
1 CERTIFICATION  
2  
3 STATE OF NEW YORK )  
4 ) ss.  
5 COUNTY OF PUTNAM )  
6 I, RAYMOND ROGENER, JR., Court  
7 Reporter and Notary Public within and for the  
8 County of Putnam, State of New York, do hereby  
9 certify:  
10 That I reported the proceedings that  
11 are hereinbefore set forth, and that such  
12 transcript is a true and accurate record of said  
13 proceedings.  
14 AND, I further certify that I am not  
15 related to any of the parties to this action by  
16 blood or marriage, and that I am in no way  
17 interested in the outcome of this matter.  
18  
19 IN WITNESS WHEREOF, I have hereu  
20 set my hand.  
21  
22  
23 RAYMOND ROGENER, JR.  
24 Court Reporter

37 (Pages 142 to 145)

